

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14980 of Gerald H. and Linda T. Salzman, pursuant to 11 DCMR 3107.2, for a variance from the front yard setback requirements for a structure on a theoretical lot (Sub-section 2516.3), a variance from the side yard requirements (Sub-section 405.9), and a variance from the theoretical lot subdivision requirements (Sub-section 2516.2) for the proposed theoretical lot subdivision, addition and conversion of an existing storage building into a single-family dwelling in an R-1-B District at premises 3820 and the rear of 3820 Woodley Road, N.W., (Square 1816, Lot 825 and 826, 419).

HEARING DATE: March 8, 1989
DECISION DATE: April 5, 1989

DISPOSITION: The Board DENIED the application by a vote of 5-0 (William F. McIntosh, Paula L. Jewell, Maybelle Taylor Bennett, Charles R. Norris and Carrie L. Thornhill to deny).

FINAL DATE OF ORDER: November 29, 1990

ORDER

The Board denied the application by its Order dated November 29, 1990. By letter dated December 6, 1990, the applicants requested a thirty-day extension of the time period to file a motion for rehearing. The bases for the request for extension of time were the difficulty of consulting appropriate people during the holiday season, an international trip scheduled by the applicants, and the need for additional time for the applicants to assess the effect of changes in the Zoning Regulations on their original request. At its public meeting of January 9, 1991, the Board denied the request for extension of time.

On December 10, 1990, the applicants filed a timely motion for reconsideration or rehearing. In support of the motion, the applicants argue as follows:

1. The Board erred in finding that there was no practical difficulty inherent in the property itself because the lot is large enough to accommodate the construction of a new dwelling without necessitating variance relief. The applicants argued that whether the lot is large enough to accommodate a new dwelling is irrelevant because the proposal before the Board concerns the renovation of an existing structure. The applicants further argued that pursuant to Clerics of St. Viator Inc. vs. the D.C. Board

of Zoning Adjustment, 320 A.2d 291 (1974) the Board must consider the practical difficulty inherent in the building as well as the land.

2. The Board erred in finding that the applicants' desire to change the nature of the existing structure necessitates the requested variance relief. The applicants argued that the "desire", i.e., "self created hardship", cannot be the basis for the Board's determination regarding an area variance pursuant to Association for Preservation of 1700 Block of N Street vs. D.C. Board of Zoning Adjustment, 384 A.2d 674 at 578 (1978) and Palmer v. Board of Zoning Adjustment, 287 A.2d 535 (1972). In addition, the applicants argued that whether or not a practical difficulty exists with respect to the present use of the structure as a garage is irrelevant.
3. The Board erred in finding that the applicants did not demonstrate of practical difficulty because they can construct a single family residence on the property as a matter of right; the applicants can demolish the garage and construct a conforming structure; and the site as currently developed conforms to the requirements of the Zoning Regulations. The applicants argued that these reasons cannot be a basis for denying the application because the practical difficulty relates to both the structure and the land and the proposed use of structure as a single family residence is permitted in the R-1-B District.

There was no opposition to the motion for reconsideration or rehearing.

Upon consideration of the applicants' motion, the final order, and the record in the case, the Board concludes that its decision in the application was based on the record and that it has made no errors of fact or law. In order to sustain the burden of proof, the applicants must satisfy the three criteria generally set forth in Section 3107.2 of the Zoning Regulations. The Board found that while the size and shape of the subject property was "extraordinary" for the immediate neighborhood, the applicants did not demonstrate a practical difficulty upon the owners inherent in the property. There is nothing physically unique about the size and shape of the property which precludes the site from conforming to the Zoning Regulations for the R-1-B District. The Board notes that in Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment, the Court found that the need for seminary facilities, for which the structure had been built as a matter of right in a residential zone, had diminished over the years to such a degree as to make the use of the structure for those purposes unreasonable. The Court further found that the structure was not suitable for

other residential uses permitted as a matter of right and, therefore, the structure itself contributed to the practical difficulty upon the owner. In the instant case, the existing garage conforms with the Zoning Regulations and may be renovated and continue use as an accessory structure without seeking variance relief. There is no evidence that the purpose for which the structure was built is no longer viable. The Board is unable to conclude that the applicants' desire to change the use of a viable, conforming structure to another use which is permitted as a matter of right but which necessitates extensive variance relief constitutes a practical difficulty upon the owner which is inherent in the property itself.

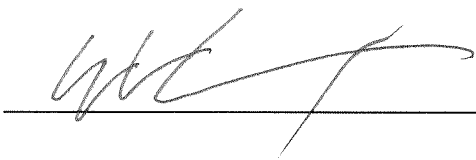
The Board notes that its consideration of the subject application was based on the Zoning Regulations in effect on the date of its decision denying the application. The applicants have every right, if they so desire, to present their proposal to the Office of Zoning Administrator for review under the Zoning Regulations currently in effect. The applicants may then reapply, if necessary, to this Board for the proper relief under the amended Zoning Regulations as cited by the Zoning Administrator.

The Board further concludes that the motion merely seeks to reargue the applicants' case as presented at the public hearing and provides no new material evidence which was not previously considered by the Board. Accordingly it is ORDERED that the request for RECONSIDERATION or rehearing be DENIED.

DECISION DATE: January 9, 1991

VOTE: 4-0 (Charles R. Norris, Paula L. Jewell and Carrie L. Thornhill to deny; Maybelle Taylor Bennett to deny by proxy; Sheri M. Pruitt not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: 

FINAL DATE OF ORDER: JAN 31 1991

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE

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SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF
ZONING ADJUSTMENT."

14980Order/BHS

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 14980

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mailed to all parties, dated JAN 31 1991 and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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EDWARD L. CURRY
Executive Director

DATE: JAN 31 1991

ATTES. 1/BHS